

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION**

MDL No. 2419

Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Cases Against the Specialty Surgery Center Defendants

**PLAINTIFFS’ STEERING COMMITTEE’S MOTION FOR JUDGMENT ON THE
PLEADINGS REGARDING COMPARATIVE FAULT DEFENSES ATTRIBUTING
FAULT TO GOVERNMENTAL ENTITIES**

The Plaintiffs' Steering Committee respectfully moves the Court, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, for entry of partial judgment dismissing the SSC Defendants',¹ and Calisher and Associates' affirmative defenses attempting to attribute fault at trial to certain governmental entities, including the Food and Drug Administration, Massachusetts Board of Registration in Pharmacy, the Tennessee Board of Pharmacy, and the Tennessee Department of Health. As grounds for this motion, the PSC states that, under Tennessee law, fault cannot be attributed to the above-mentioned government agencies because none of those agencies owed an individual legal duty to any particular Plaintiff. Under Tennessee's public duty doctrine, the only legal duty owed by said governmental entities was owed to the general public, not to any particular individual. Accordingly, because legal duty is an essential element of fault under Tennessee law, Plaintiffs are entitled to judgment on the pleadings establishing that fault cannot be allocated to governmental entities at trial.

As grounds for this motion, the Plaintiffs' Steering Committee relies upon the contemporaneously filed Memorandum of Law and all operative pleadings filed to date.

¹ The “SSC Defendants” include Specialty Surgery Center, PLLC, Dr. Kenneth Lister, and Kenneth Lister, MD, PC.

Date: December 29, 2016

Respectfully submitted,

/s/ Benjamin A. Gastel

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Plaintiffs' Steering Committee

CERTIFICATE OF CONSULTATION PURSUANT TO RULE 7.1

I, Benjamin A. Gastel, hereby certify that prior to the filing of this Motion, the Plaintiffs' Steering Committee attempted to meet and confer in good faith with counsel for the Specialty Surgery Center Defendants. The parties were unable to reach an agreement, thus necessitating this Motion.

/s/ Benjamin A. Gastel
Benjamin A. Gastel

CERTIFICATE OF SERVICE

I, Benjamin A. Gastel, hereby certify that I caused a copy of the foregoing document to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Date: December 29, 2016.

/s/ Benjamin A. Gastel
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